

## EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2006-1537-PST-E TCEQ ID:RN101892982 CASE NO.: 31048

RESPONDENT NAME: NEW WAY ENTERPRISE INC. DBA TIME OUT FOOD MART #2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 1000 North Velasco Street, Angleton, Brazoria County

**TYPE OF OPERATION:** Convenience store with retail sales of gasoline

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on June 23, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Terry Murphy, Air Enforcement Section, MC 149, (512) 239-5025

**TCEQ Regional Contact:** Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

**Respondent:** Mr. Yunusali Badarpura, President, New Way Enterprise Inc., 1000 North Velasco Street,  
Angleton, Texas 77515

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> June 20, 2006</p> <p><b>Dates of NOE Relating to this Case:</b> August 24, 2006</p> <p><b>Background Facts:</b></p> <p>An EDPRP was filed on April 25, 2007. A settlement agreement was reached with the Respondent, and a signed Agreed Order was received on May 5, 2008.</p> <p><b>PST:</b></p> <p>1. Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) [30 TEX ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>2. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</p>	<p><b>Total Assessed:</b> \$6,200</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid/Due to General Revenue:</b> \$450/\$5,750</p> <p>The Respondent has paid \$450 of the administrative penalty. The remaining amount of \$5,750 shall be paid in 23 monthly payments of \$250 each.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Technical Requirements:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately, begin conducting effective manual or automatic inventory control procedures for all USTs.</li> <li>2. Within 30 days, install and implement a release detection method.</li> <li>3. Within 45 days, submit written certification to demonstrate compliance with these Ordering Provisions.</li> </ol>



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

<b>DATES</b>	<b>Assigned</b>	28-Aug-2006	<b>Screening</b>	30-Aug-2006	<b>EPA Due</b>	
	<b>PCW</b>	27-Feb-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	New Way Enterprise Inc. dba Time Out Food Mart #2
<b>Reg. Ent. Ref. No.</b>	RN101892982
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor Source

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	31048	<b>No. of Violations</b>	2
<b>Docket No.</b>	2006-1537-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Jason Godeaux
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$5,000
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	24% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,200
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<b>Notes</b>	Enhancement for two NOV's without same or similar violations and one 1660 Order.
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<b>Culpability</b>	No	0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

<b>Notes</b>	The respondent does not meet the good faith criteria.
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<b>Economic Benefit</b>	0% Enhancement*	<b>Subtotal 6</b>	\$0
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<b>Total EB Amounts</b>	\$54	<i>*Capped at the Total EB \$ Amount</i>
<b>Approx. Cost of Compliance</b>	\$1,300	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$6,200
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$6,200
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$6,200
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<b>DEFERRAL</b>	0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	This is not an expedited case.
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<b>PAYABLE PENALTY</b>	\$6,200
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**Screening Date** 30-Aug-2006**Docket No.** 2006-1537-PST-E**PCW****Respondent** New Way Enterprise Inc. dba Time Out Food Mart #2

Policy Revision 2 (September 2002)

**Case ID No.** 31048

PCW Revision May 19, 2005

**Reg. Ent. Reference No.** RN101892982**Media [Statute]** Petroleum Storage Tank**Enf. Coordinator** Jason Godeaux**Compliance History Worksheet**>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 24%>> **Repeat Violator (Subtotal 3)**No **Adjustment Percentage (Subtotal 3)** 0%>> **Compliance History Person Classification (Subtotal 7)**Average Performer **Adjustment Percentage (Subtotal 7)** 0%>> **Compliance History Summary****Compliance History Notes**

Enhancement for two NOVs without same or similar violations and one 1660 Order.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 24%

Screening Date 30-Aug-2006

Docket No. 2006-1537-PST-E

PCW

Respondent New Way Enterprise Inc. dba Time Out Food Mart #2

Policy Revision 2 (September 2002)

Case ID No. 31048

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101892982

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jason Godeaux

Violation Number

1

Primary Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(1)(A)

Secondary Rule Cite(s)

Tex. Water Code § 26.3475(c)(1)

Violation Description

Failure to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring).

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	X			

## &gt;&gt; Programmatic Matrix

	Falsification	Major	Moderate	Minor		Percent	
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.						

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

## Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the June 20, 2006 investigation date to the August 30, 2006 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$50

Violation Final Penalty Total \$3,100

This violation Final Assessed Penalty (adjusted for limits) \$3,100

**Economic Benefit Worksheet**

Respondent New Way Enterprise Inc. dba Time Out Food Mart #2  
 Case ID No. 31048  
 Reg. Ent. Reference No. RN101892982  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,200	20-Jun-2006	20-Apr-2007	0.8	\$50	n/a	\$50

Notes for DELAYED costs

Estimated cost to monitor USTs for releases. The Date Required is the date of the investigation and the Final Date is the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$1,200****TOTAL** **\$50**

**Screening Date** 30-Aug-2006**Docket No.** 2006-1537-PST-E**PCW****Respondent** New Way Enterprise Inc. dba Time Out Food Mart #2

Policy Revision 2 (September 2002)

**Case ID No.** 31048

PCW Revision May 19, 2005

**Reg. Ent. Reference No.** RN101892982**Media [Statute]** Petroleum Storage Tank**Enf. Coordinator** Jason Godeaux**Violation Number** 2**Primary Rule Cite(s)** 30 Tex. Admin. Code § 334.48(c)**Secondary Rule Cite(s)****Violation Description** Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel.**Base Penalty** \$10,000>> **Environmental, Property and Human Health Matrix**

OR	Harm			Percent
	Release	Major	Moderate	
	Actual			
	Potential	X		25%

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					Percent
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.				

**Adjustment** -\$7,500**Base Penalty Subtotal** \$2,500**Violation Events****Number of Violation Events** 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$2,500

One quarterly event is recommended from the June 20, 2006 investigation date to the August 30, 2006 screening date.

**Economic Benefit (EB) for this violation****Statutory Limit Test****Estimated EB Amount** \$4**Violation Final Penalty Total** \$3,100**This violation Final Assessed Penalty (adjusted for limits)** \$3,100

**Economic Benefit Worksheet**

Respondent New Way Enterprise Inc. dba Time Out Food Mart #2  
 Case ID No. 31048  
 Reg. Ent. Reference No. RN101892982  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description	No commas or \$						

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	20-Jun-2006	20-Apr-2007	0.8	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to conduct inventory control for all USTs. Date Required is the investigation date. Final Date is the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$100****TOTAL** **\$4**



# Compliance History

Customer/Respondent/Owner-Operator: CN601033343 New Way Enterprise Inc. Classification: AVERAGE Rating: 16.00  
 Regulated Entity: RN101892982 TIME OUT FOOD MART #2 Classification: AVERAGE Site Rating: 16.00  
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 35274  
 Location: 1000 N VELASCO ST, ANGLETON, TX, 77515 Rating Date: 9/1/2005 Repeat Violator: NO  
 TCEQ Region: REGION 12 - HOUSTON  
 Date Compliance History Prepared: August 30, 2006  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: August 30, 2001 to August 30, 2006  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Terry Murphy Phone: (512) 239-5025

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- Effective Date: 08/28/2004 ADMINORDER 2003-0891-PST-E  
 Classification: Moderate  
 Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)  
 30 TAC Chapter 37, SubChapter I 37.815(b)  
 Description: Failure to demonstrate acceptable financial assurance.
- B. Any criminal convictions of the state of Texas and the federal government. N/A
- C. Chronic excessive emissions events. N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 09/27/2002 | (145602) |
| 2 | 10/25/2002 | (146131) |
| 3 | 08/11/2006 | (489005) |
| 4 | 08/24/2006 | (483173) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |          |                          |
|--------------|---|----------|--------------------------|
| Date:        | 09/27/2002  | (145602) |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 37, SubChapter I 37.815(a)<br>30 TAC Chapter 37, SubChapter I 37.815(b)  |          |                          |
| Description: | Failure to demonstrate acceptable financial assurance.  |          |                          |
| Date:        | 06/20/2006  | (489005) |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.242(3)   |          |                          |
| Description: | 30 TAC 115.242 (3)(A) - Failure to provide and maintain the Stage II Vapor Recovery system in proper operating condition, as specified by the California Air Resources Board (CARB) Executive Order, including the absence or disconnection of any component that is a part of the approved system. |          |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.242(3)(A)  |          |                          |
| Description: | 30 TAC 115.242 (3)(A) - Failure to provide and maintain the Stage II Vapor Recovery system in proper operating condition, as specified by the California Air Resources Board (CARB) Executive Order, including the absence or disconnection of any component that is a part of the approved system. |          |                          |

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSS).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
NEW WAY ENTERPRISE INC.  
DBA TIME OUT FOOD MART #2;  
RN101892982**

**§  
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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2006-1537-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding New Way Enterprise Inc. dba Time Out Food Mart #2 ("New Way") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and New Way, appear before the Commission and together stipulate that:


1. New Way owns and operates a convenience store with retail sales of gasoline at 1000 North Velasco Street in Angleton, Brazoria County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and New Way agree that the Commission has jurisdiction to enter this Agreed Order, and that New Way is subject to the Commission's jurisdiction.
4. New Way received notice of the violations alleged in Section II ("Allegations") on or about August 29, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by New Way of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of six thousand two hundred dollars (\$6,200.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). New Way has paid four hundred fifty dollars (\$450.00) of the administrative penalty. The remaining amount of five thousand seven hundred fifty (\$5,750.00) shall be

payable in twenty-three monthly payments of two hundred fifty hundred dollars (\$250.00) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If New Way fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of New Way to meet the payment schedule of this Agreed Order constitutes the failure by New Way to timely and satisfactorily comply with all of the terms of this Agreed Order.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and New Way have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that New Way has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

New Way is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); and
  2. 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel.
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### III. DENIALS

New Way generally denies each allegation in Section II ("Allegations").

### IV. ORDER

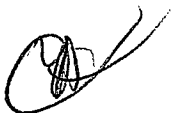
1. It is, therefore, ordered by the TCEQ that New Way pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and New Way's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: New Way Enterprise Inc. dba Time Out Food Mart #2, Docket No. 2006-1537-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. New Way shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, New Way shall begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48;
  - b. Within 30 days after the effective date of this Agreed Order, New Way shall install and implement a release detection method, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
  - c. Within 45 days after the effective date of this Agreed Order, New Way shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 2.a. and 2.b.

The certification shall be notarized by a State of Texas Notary Public and include the following language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals



immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Nicole Bealle, Waste Section Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Street, Suite H  
Houston, Texas 77023-1452

3. The provisions of this Agreed Order shall apply to and be binding upon New Way. New Way is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If New Way fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, New Way's failure to comply is not a violation of this Agreed Order. New Way shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. New Way shall notify the Executive Director within seven days after New Way becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by New Way shall be made in writing to the Executive Director. Extensions are not effective until New Way receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.



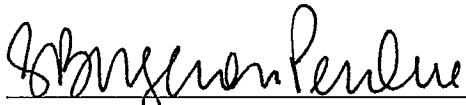
6. This Agreed Order, issued by the Commission, shall not be admissible against New Way in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to New Way, or three days after the date on which the Commission mails notice of the Order to New Way, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

A handwritten signature or set of initials, possibly "CA", written in dark ink in the bottom right corner of the page.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

6/25/08


Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on New Way's compliance history;
- Greater scrutiny of any permit applications submitted by New Way;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against New Way;
- Automatic referral to the Attorney General's Office of any future enforcement actions against New Way; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

06-18-08

Date

YUNUS ALT

Name (Printed or typed)

President

Title

Authorized representative of

New Way Enterprise Inc. dba Time Out Food Mart #2

